No. 1899

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CATHERINE D. STEAD et al.,
Appellants,
vs.
ISABELLA M. CURTIS et al.,
Appellees.

ADDITIONAL AUTHORITIES
In Support of Brief for Appellees
(On Rehearing)

J. C. CAMPBELL,
WALTER SHELTON,
Solicitors for Appellees Isabella M. Curtis, John M. Curtis, Elizabeth M. Muir Mugan, William G. Mugan, and the Jacob Z. Davis Estate Company.

Filed this..............................day of March, 1913.

FRANK D. MONCKTON, Clerk.

By..............................Deputy Clerk.

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The cases cited herein, together with extracts therefrom, are applicable to Chapter 4 (Sections 70 to 74, inclusive) of the brief for appellees on rehearing.

> "The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands,

> not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts."

Foster v. Mansfield &c. Ry., 146 U. S. 89, 99.

Knowledge of such facts as would put a person of ordinary prudence and diligence on inquiry is equivalent to knowledge of all facts which a diligent inquiry would disclose; so, ignorance of the means by which a fraud is accomplished, and of the evidence by which it might be established, constitute no excuse for delay when such fraud is known.

Johnson v. Standard Mining Co., 148 U. S. 360, 370;
Felix v. Patrick, 145 U. S. 317;
Swift v. Smith, 79 Fed. 709, 713;
McMonagle v. McGlinn, 85 Fed. 88, 92-94;
Rugan v. Sabin, 53 Fed. (C. C. A.) 415, 418-419;
Sheftel v. Hays, 58 Fed. (C. C. A.) 457, 461;
Lant v. Manley, 71 Fed. 7, 18-19;
Melms v. Pabst Brewing Co., 93 Wis. 153, 174; 66 N. W. 518; 57 Am. St. Rep. 899.

The allegations in the bill show that appellants knew of the alleged forgery and of the alleged fraudulent purpose to acquire title to the estate of decedent, which was certainly sufficient to put a prudent man on inquiry for facts to support such allegations. It also appears that an attorney who had no interest in the case was able to discover alleged facts of which appellants say they were ignorant, but there is no showing that there was anything exceptional or special about his investigation and there is nothing to show that the same investigation could not have been made many years ago by appellants with the same result. It must therefore necessarily follow that the rule stated in the cases requiring appellants to use diligence, precludes a recovery at this time, and, to use the language of Chief Justice Fuller:

> "Those who have slept upon their rights must be remitted to the repose from which they should not have been aroused."

Respectfully submitted,

J. C. CAMPBELL,
WALTER SHELTON,

Solicitors for Appellees Isabella M. Curtis, John M. Curtis, Elizabeth M. Muir Mugan, William G. Mugan, and the Jacob Z. Davis Estate Company.